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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of:	)	
	)	Reply Reference # 1800B3-GDG
Tolling/Extension Request for KRZB (FM)	)	MM Docket No. 98-43
Construction Permit pursuant	)	FCC 98-281; FCC 99-267
to tolling provisions under	)	KRZB (FM), Archer City, TX
47 C. F. R. 73.3598(b)(i) and (ii)	)	Facility # 79024
and all other applicable Commission	)	File # BMPH-19990217IB
rules, memorandum, precedent,	)	
report and order, or practice	)	

To: The FCC Chairman and Commissioners

**APPLICATION FOR REVIEW BEFORE FCC CHAIRMAN AND COMMISSIONERS**

**OF AUDIO SERVICES CHIEF'S DISMISSAL OF TEXAS GRACE COMMUNICATIONS'**

**"PETITION FOR RECONSIDERATION" TO GRANT LEGITIMATE**

**TOLLING/EXTENSION TIME ON KRZB/ARCHER CITY, TX CONSTRUCTION PERMIT,**

**AND**

**PROTEST OF AUDIO SERVICES CHIEF LINDA BLAIR'S BLATANT LACK OF CANDOR,**

**WILLEFUL MISREPRESENTATION WHEN SUMMARIZING PLAINTIFF'S**

**PETITION STATEMENTS AND CASE CIRCUMSTANCES, COVERING UP OF**

**PERTINENT FACTS, AND INEXCUSABLE TARDY RESPONSE MISCONDUCT**

**WITHIN THIS FEDERAL PROCEEDING**

Pursuant to applicable Commission Rules, Texas Grace Communications ("Texas Grace"), proprietor of station KRZB (FM) licensed to Archer City, Texas, hereby submits this Application for Review by the FCC Chairman and Commissioners of the December 14, 2000 denial (incorporated by reference) by Audio Services Division Chief Linda Blair ("Blair") of Texas Grace's timely filed "Petition For Reconsideration of FCC Refusal to

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However, as Texas Grace will demonstrate herein, Chief Blair literally deducted all three years of lifespan time from the KRZB/Archer City Permit before it even existed! Texas Grace was properly awaiting conclusion of a bona fide Commission "administrative review" to facilitate ultimate grant of its Archer City broadcast Permit---and therefore held no valid Permit allowing such a construction---when it complied timely (on March 5, 1999) with the Commission's instruction to file for Tolling Request on its still unissued Permit. Texas Grace rightfully believes it to be ludicrous, and a misapplication of FCC Rules and the law, for the Chief to deduct all lifespan time and thereby penalize the would-be permittee's livelihood, before a Permit is granted, and for absolutely no incorrect conduct on the part of the Permittee.

Texas Grace did initially hold a KRZB permit for construction at the wholly separate community of Olney, Texas. However, within approximately one-year of that Permit's receipt--in October, 1997, the Commission (under an administrative review in NPRM 97-225) noticed deletion of this Permit, stating that the public interest would better be served if KRZB instead provided service at the new community of Archer City, and an entirely separate channel service was allotted to Olney to which Texas Grace held no construction rights. The Commission stated further that it would be a "favorable" condition for Texas Grace *not* to build the "noticed for deletion" service at Olney, on the grounds that constructing such a facility would merely cause a service interruption, and thereby not be in the public interest. By the Commission's own actions, statements and citings, KRZB's permit was therefore no longer relevant for construction at the initial community effective with the October 1997 undertaking of this Commission administrative review to delete it, as referenced. Texas Grace complied with the Commission's dictates in this review, and, effective November 1998, the Table of Allotments was officially changed by Commission Order (DA98-2002), officially deleting the Olney service, and stipulating that KRZB was to build a facility licensed instead to Archer City, pending ultimate grant of a Permit allowing the construction.

Further administrative reviews were necessary to be concluded before an Archer City Permit could ultimately be granted, including one such review precipitated by actions of a third party who had placed a drop-in channel obstructive to KRZB's intended service plan.

Prejudicial to Texas Grace---and in defiant contradiction to the "favorable", "public interest" citings of the permittee's behavior by the Commission itself, as well as to clear Commission Order affirming Texas Grace's proper conduct in not constructing an Olney facility---Chief Blair has nonetheless unjustly punished Texas Grace for

not building at Olney. To this end, Blair erroneously continued to clock all time off the deleted community's permit while Texas Grace was in limbo awaiting the administrative grant of its Permit to build at Archer City. Then, Blair deducted the equivalent of the dead permit's theoretical 3-year lifespan, from the wholly separate, new service Permit at Archer City---before the Commission had even granted it, as referenced.

Texas Grace incorporates by reference the whole of its unfairly denied November 20, 2000 Petition for Reconsideration herein, and requests that it be read by the Commissioners. The Commissioners will note upon such examination that Chief Blair has failed to address--and indeed covered up--in her denial several crucial arguments and tenets raised by Texas Grace in defense of simply garnering a fair, equitable three-year unencumbered lifespan for construction of its KRZB/Archer City station.

Among such arguments, Texas Grace raises Blair's having taken over 19 months before first issuing any response to the timely filed tolling request of Texas Grace---giving Texas Grace an unjust extension denial with barely 3 months remaining on its Permit at the time (as of October 20, 2000), irreparably injuring Texas Grace, its construction effort, and outright livelihood, by prejudicially denying the permittee any time or opportunity to seek legal redress without cancellation of the Permit. But Blair refuses to acknowledge existence of this vital Texas Grace pleading, or the ramifications of her tardy misconduct upon the permittee.

Blair's refusal to acknowledge her own defiance of and conflict with previous Commission Order and positive characterization of Texas Grace's conduct in the KRZB endeavor is raised, along with Blair's misrepresentation that we allegedly asked for tolling based merely upon rulemaking requests, as opposed to the bona fide administrative reviews necessitating resolution prior to grant of the Archer City Permit as cited by Texas Grace.

Evidentiary exhibit of a prematurely issued construction permit is made, demonstrating that the Commission itself stated that KRZB/Archer City was still encumbered by administrative review delay precluding construction on November 30, 1999--although this evidence is, once again, ignored by Blair.

KRZB and its permittee do not wish to make an enemy in the Chief of a Commission Bureau. However, as the Commissioners can plainly see, we have not been treated justly by Blair in this endeavor, and are forced against our will to correctly fight for the very life of the KRZB Permit, and livelihood of our vital local broadcast enterprise.

The Commissioners' courtesy and efforts in prosecuting this important Application for Review are greatly appreciated by Texas Grace Communications. Texas Grace respectfully prevails upon the Commissioners to order

appropriate extension upon the lifespan of the KRZB/Archer City Permit, to reflect an expiration date of no earlier than February 7, 2003 so as to allow our construction to timely proceed.

**1. TEXAS GRACE DID NOT YET HOLD ANY VALID “ORIGINAL” PERMIT FOR CONSTRUCTING FM SERVICE LICENSED TO ARCHER CITY, TX WHEN IT TIMELY FILED FOR TOLLING EXTENSION AS REQUIRED IN MARCH, 1999....YET BLAIR STILL ILLEGALLY DEDUCTED TIME OFF THE PENDING PERMIT’S LIFESPAN AS IF SUCH A PERMIT EXISTED.**

This is a crucial point of fact made by Texas Grace in its Petition, but willfully covered up by Blair in making a purported “summary” of Texas Grace’s arguments. Among other places, this point is clearly punctuated on p. 2 of the Petition, wherein it is stated that KRZB “had yet to even receive a permit permitting construction of a service at Archer City at the time it made its tolling request”.

By concealing this essential point from the Petition denial, Blair makes it seem as though a valid Permit for KRZB to construct a C2 service licensed to Archer City, Texas had already been granted as of March, 1999. In reality, the first-ever Permit actually permitting construction for such a facility at Archer City, Texas was not granted by the FCC until February 7, 2000. Construction could therefore not legally have commenced prior to the February 7, 2000 date, as no permit permitting said construction ever existed. It is therefore ludicrous, and representative of a blatant covering up of pertinent facts by Blair, for Blair to deduct time off of a construction permit that had not yet been granted---or to otherwise punish a law-abiding permittee for complying with FCC-established rules, procedures, and conditions.

**2. AT THE TIME OF THE FCC’S ADOPTION OF RULES UNDER MM DOCKET 98-43, AND EFFECTIVE DATE OF THE STREAMLINING R&O, KRZB WAS IN A PERMIT LIMBO---MEANING IT HELD NO “VALID AUTHORIZATION” OR VIABLE “ORIGINAL PERMIT” FROM WHICH ANY LIFESPAN TIME SHOULD HAVE BEEN DEDUCTED.**

This crucial point towards demonstrating the right of KRZB to receive a full three (3), unencumbered year lifespan upon its construction permit at Archer City is clearly articulated on p. 2 of the Texas Grace Petition, wherein it is stated: “The chief misapplied the rules by continuing to deduct time from a no longer relevant permit at Olney after the Commission itself noticed and undertook an administrative review to delete the service”. The

Chief was certainly welcome to challenge this point of fact. Instead, Blair deceitfully obscured this essential fact, making it seem as though it was never raised by the permittee.

In simple terms, KRZB was the equivalent of a “man with no country” at the time the FCC considered implementation of tolling rules under FCC 98-43 and 98-281. At that time, KRZB’s so-called “original” permit was no longer relevant or viable because the Commission *itself* had officially noticed and proposed its deletion in October, 1997 (via administrative review under Notice of Proposed Rulemaking in 97-225, incorporated by reference, wherein the Commission noticed deletion of KRZB as a service at the community of Olney, Texas).

In so doing, the FCC itself proposed that service at Olney be on another frequency for which Texas Grace had absolutely no construction rights; and that KRZB was better suited as a service in the wholly separate community of Archer City---pending conclusion of an Administrative Review, and ultimate grant of an Archer City facility permit permitting the construction.

At the time of the effective date of the *Streamlining R&O* (February 16, 1999), it is crucial to note that Texas Grace remained in a permit limbo, holding no “valid authorization” or Permit on which to build at Archer City, nor any “valid authorization” to even build at the former community of Olney---given that the Table of Allotments was officially changed by Commission Order effective November 17, 1998 (under DA98-2002), unquestionably voiding such “valid” or viable “original permit” status at Olney *before* the effective date of the *Streamlining R&O*.

As the Commissioners can plainly see, Texas Grace therefore clearly held no viable “original permit” or “valid authorization” from which lifespan time could legitimately be deducted prior to grant of its Archer City Permit.

The first and only such viable, “original” construction permit issued since tolling rules implementation took effect, was the first-ever Permit permitting construction of KRZB as an Archer City service, as granted February 7, 2000. Blair misapplies the law and blatantly prejudices KRZB, by erroneously deducting the entire lifespan off this permit before it was even issued. Blair further displays a gross lack of candor in not acknowledging this vital tenet of the KRZB Petition.

**3. BLAIR COVERS UP A UNIQUE CONDITION IN THE R&O ORDERING KRZB TO SERVE ARCHER CITY, WHEREBY THE COMMISSION ITSELF LOOKED FAVORABLY UPON KRZB'S NOT CONSTRUCTING A SERVICE AT THE PREVIOUS COMMUNITY.**

This key element of the Texas Grace Petition is similarly concealed by Blair in her purported "summary" of Texas Grace's arguments, and thereby never addressed. It is nonetheless clearly referenced on p. 7 of the Petition, wherein Texas Grace states: "Both the referenced NPRM, and the Report and Order itself which mandated that KRZB be licensed to Archer City (DA 98-2002, incorporated by reference), cited the *unique* condition that the Commission would not be "realloting an operating station"---and that Texas Grace would therefore not be "interrupting service" back at Olney---in granting such change to the Table of Allotments".

This point is crucial, in that it plainly demonstrates to the Commissioners that Texas Grace's having not constructed a service at the previous community was clearly considered a favorable condition by the Commission---not an action for which Texas Grace or KRZB should be penalized.

But instead of upholding this Commission finding, Blair unilaterally contradicts the FCC by nonetheless punishing Texas Grace for not building at the previous community. This is evidenced by the fact that Blair deducted the entirety of lifespan time from KRZB's original Archer City construction permit before it was ever issued---erroneously taken by Blair from the timeclock of the permit at the previous community where the Commission, as noted, found Texas Grace to have engaged in favorable conduct by not constructing a facility.

With Texas Grace found to have engaged in favorable conduct by the Commission itself---and in adherence specifically to a favorable condition by the FCC in not having commenced and then interrupted service at the previous community---Blair misapplies the law and defies the Commission in prejudicially granting KRZB/Archer City a penalized permit allowing only 1-year construction time.

**4. BLAIR COVERS UP THE COMMISSION'S POSITIVE PUBLIC INTEREST CHARACTERIZATION OF KRZB'S COMMUNITY CHANGE TO ARCHER CITY, EVEN THOUGH IT WAS PLEADED IN THE KRZB PETITION.**

Concurrent with the Commission's notation of favorable conduct on Texas Grace's part for not building the KRZB service at Olney, the Commission also noted that "the public interest would be served" in ordering the

facility move to Archer City (see DA98-2002), based on provision of first local services to two distinct local communities, among other positive “priority triggers”.

The Texas Grace Petition clearly presents this argument on p. 7, stating: “The Audio Services Chief must not penalize, or otherwise deny tolling event status to Texas Grace, for engaging in conduct cited as positive and in the public interest...(by the Commission)”. However, to Texas Grace’s prejudice, Blair improperly conceals this vital argument of Texas Grace in making “summary” of the Petition.

**5. BLAIR CONCEALS FROM THE COMMISSIONERS THE ISSUE OF CONTRADICTIONARY POLICIES METED OUT BY THE FCC WITH REGARD TO THE KRZB CASE--AND SPECIFICALLY, BLAIR’S OWN WILLFUL DEFIANCE OF COMMISSION FINDING, ORDER AND POLICY TO ARBITRARILY AND CAPRICIOUSLY PUNISH TEXAS GRACE.**

The issue of conflicting FCC policies towards KRZB regarding the Commission’s positive characterization of the permittee with regard to KRZB’s conduct in the Ordered community change from Olney to Archer City, versus Blair’s willful disregard for Commission finding, order and policy to arbitrarily and capriciously punish Texas Grace for the very same conduct---is clearly and passionately articulated in the Texas Grace Petition for Reconsideration. It is obviously an essential tenet of Texas Grace’s compelling argument for permit tolling, and clearly demonstrates why the original KRZB construction permit for Archer City service is entitled to a full three (3) unencumbered year lifespan.

While this argument regrettably demonstrates prejudicial misconduct by Blair towards permittee Texas Grace, as well as blatant defiance of the Commission itself on Blair’s part, Blair acts with lack of candor and deceit by willfully concealing the issue in making purported “summary” of Texas Grace’s Petition.

Blair’s defiance of the Commission to penalize Texas Grace, and prejudicial conduct towards the permittee, is plainly enumerated on p. 2 of the Petition, wherein it is stated: “penalization of KRZB by the Audio Services Chief--for engaging in conduct simultaneously noted as being in the public interest by the Allocations Branch--with regard to the permittee’s diligently prosecuting KRZB’s community change is also raised, along with the fact that the Chief misapplied the rules by continuing to deduct time from a no longer relevant permit at Olney after the Commission itself noticed and undertook an administrative review to delete the service”.

Blair's defiance of the Commission's own positive finding and characterization of Texas Grace's prosecution of its construction permit, as previously rendered by the Allocations Branch Chief, is enumerated on p. 7 of KRZB's Petition as follows: "The Audio Services Chief must not penalize, or otherwise deny tolling event status to Texas Grace, for engaging in conduct cited as positive and in the public interest by the Allocations Chief" (see DA98-2002).

On p. 8, Texas Grace further elaborates: "Should (Blair) force Texas Grace to bring this matter to District of Columbia Circuit Court on appeal, (Blair) will have to defend.....why (Blair) has arbitrarily and erroneously penalized Texas Grace/KRZB for correctly following a condition necessary for positive resolution of an FCC administrative review wherein Texas Grace's conduct was found to be in the public interest by the Commission itself".

Prior to Texas Grace's timely filing, on March 5, 1999, of its Tolling Request per direction of Blair, the Commission itself had already found KRZB's permittee to have acted in good stead, in the public interest, and in accommodation of a specifically favorable condition by not building a broadcast station at the community of Olney, Texas---a community the Commission ruled would be better served by a broadcast service other than KRZB (under DA 98-2002).

Concurrently, the Commission, prior to the referenced Tolling Request filing, had already deleted KRZB's initial service and frequency at Olney---meaning that KRZB no longer held a viable "original" permit or "valid authorization" permitting any construction---and ordered KRZB to file within a set timeframe a Form 301 application prior to grant of an Archer City construction permit to replace the deleted permit at Olney, which was appropriately adhered to by Texas Grace.

Yet over nineteen months later, on October 20, 2000, when Blair finally got around to answering Texas Grace's Tolling Request, Blair erroneously punished Texas Grace for engaging in the very conduct positively cited by the Commission, as referenced. In gross contradiction and defiance of previous Commission finding and Order, Blair prejudicially and maliciously evaporated three years of time off the lifespan of the future Archer City permit before it was ever granted, despite Texas Grace's clear compliance with the Commission in not building the deleted community's service.



As an officer of the FCC, Blair has a duty and responsibility to uphold previously-Ordered actions of the Commission, as well as to honor findings, designations, conditions, and policies already in place regarding a permittee through prior Commission action. To do otherwise blatantly defies the Commission itself, Blair's responsibility within her position at the Commission, and the public trust.

Yet Blair has blatantly shirked this responsibility, defying the FCC to the undeserved detriment and prejudice of Texas Grace---who was punished by Blair for engaging in exactly what the Commission said was correct, positive action.

Blair further shirks this responsibility by deceitfully covering up the existence of Texas Grace's rightfully made pleading demonstrating Blair's misconduct in this regard within the Federal proceeding at hand---as well as from the eyes of the Commissioners.

In summation, Blair acts in error, and against the law, by both defying the Commission, and penalizing a permittee who properly engaged in conduct and adhered to Commission directives already deemed to be correct, positive, favorable and in the public interest by the Commission.

**6. BLAIR MISREPRESENTS BEFORE THE COMMISSIONERS THAT KRZB'S PETITION REQUESTS TOLLING TIME BASED MERELY UPON "RULEMAKING REQUESTS", AS OPPOSED TO BONA FIDE ADMINISTRATIVE REVIEWS SET FORTH BY THE FCC ITSELF.**

On p. 3 of KRZB's Petition denial, Blair willfully displays a lack of candor, and misrepresents the very essence of Texas Grace's clearly articulated Petition, by chastising Texas Grace as follows: "Rulemaking requests....are not considered "tolling events" as defined by the Commission..". However, Texas Grace never asks for tolling extension time based merely upon "rulemaking requests" anywhere in its November 20, 2000 Petition for Reconsideration.

It appears as though Blair is trying to deceive the Commissioners through such reference, to cover up Blair's knowledge of the Commission's own bona fide administrative reviews necessary to be concluded prior to grant of an Archer City construction permit. These bona fide administrative reviews were indeed cited by KRZB in its Petition as legitimate encumbrances pending grant of an Archer City Permit, and soundly resolved by the Commission effectuating grant of the Permit.

To clarify the Commission's initial "administrative review" which would eventually lead towards the FCC's granting KRZB an original Archer City construction permit on February 7, 2000, this took the form of an NPRM, or Notice of Proposed Rulemaking, ordered, implemented and conducted as an official administrative review proceeding by the Commission's Allocations Branch effective October, 1997 (under 97-225).

In its Petition, Texas Grace correctly cites this Commission administrative review as grounds to clearly refute penalization by Blair for KRZB's having not constructed aural service at a previous community, since KRZB's right to provide such service was deleted by Commission Order. Texas Grace also appropriately cites the process through which it legally complied with this administrative review's Order (under DA 98-2002) to timely tender Form 301 application, which led to a secondary administrative review (please see subsequent section) necessitating disposition by the Commission before the 301 application was ultimately approved, and the original construction permit at Archer City granted.

As the Commissioners can plainly see, and as can be verified through examination of the Texas Grace Petition, Blair's false insinuation that KRZB/Archer City seeks permit extension time based merely upon nebulous "rulemaking requests" has no basis in fact. The administrative reviews cited by Texas Grace's Petition clearly meet the Commission's definition of tolling encumbrance criteria, as they obstructed KRZB's ability to construct its pending Archer City broadcast station until such time as they could be resolved by the Commission, allowing for ultimate grant of the Archer City service permit.

**7. BLAIR MISREPRESENTS A STATED TOLLING REQUEST TIMEFRAME MADE BY TEXAS GRACE IN ITS PETITION, AS WELL AS THE REAL LENGTH OF TIME EXPENDED BY THE COMMISSION FOR RESOLUTION OF ADMINISTRATIVE REVIEWS/ENCUMBRANCE PRIOR TO PERMIT GRANT.**

Blair incorrectly states on p. 2 of the denial of the Petition for Reconsideration that Texas Grace allegedly asked for encumbrance/tolling time on an administrative review which concluded "September 23, 1998". This constitutes a willful misrepresentation of fact, and a complete lack of candor by Blair in making such false statement within this Federal proceeding.

First, Texas Grace never cited a date of "September 23, 1998" anywhere in its Petition as a closure parameter date of any sort in its request for tolling. Nor is the date even an accurate representation of when the

Report and Order under DA 98-2002 was “effective”---which would not occur until approximately two months later (November 17, 1998). Nor did “grant of a construction permit” permitting service at Archer City occur on this effective date.

As Blair is well aware---and which was made very clear in KRZB’s Petition---the tolling/encumbrance period did not automatically end with the November, 1998 effective date of DA 98-2002, which changed the Table of Allotments and ordered KRZB to serve the new community of Archer City. The Order clearly stipulated that Texas Grace was then required to file a 301 Form within a 90-day window to specify actual site coordinates for the pending Archer City facility. Texas Grace timely made such filing under BMPH-990217IB, incorporated by reference.

The very processing of the Commission-mandated 301 filing necessary for Texas Grace to tender pending grant of an original Archer City service Permit clearly meets tolling criteria, and extends the “administrative review” period seamlessly through ultimate grant of the pending Permit. Since the Commission’s grant of the original Permit permitting construction of KRZB as a licensed Archer City service did not occur until February 7, 2000, the Commission’s bona fide administrative review period (necessary for resolution and disposition before construction at Archer City could legally occur) ran from October 1997 (the inception of the Commission’s NPRM under 97-225), through February 7, 2000.

Blair’s attempt to make it seem as though Texas Grace had cited an encumbrance parameter ending on September 23, 1998, and claim that Texas Grace allegedly “raises” the argument that an administrative review effectuating grant of its Archer City permit somehow concluded on that date, represents a false characterization of the permittee’s Petition by Blair within this Federal proceeding, and, as demonstrated, has absolutely no basis in fact.

**8. BLAIR COVERS UP TEXAS GRACE’S PETITION CITING OF A PREMATURELY-ISSUED PERMIT FOR ARCHER CITY SERVICE WHICH EVIDENCES THAT KRZB WAS STILL UNDER ENCUMBRANCE, DUE TO ADMINISTRATIVE REVIEW DELAY ACKNOWLEDGED AND ADMITTED BY THE COMMISSION ITSELF.**

On p. 3 of its Petition for Reconsideration, Texas Grace stated as follows: “A permit was prematurely issued on November 30, 1999 specifying KRZB’s C2 service at Archer City, but was rescinded after it was learned

that RM-9423 was still under administrative review, precluding construction pending disposition of the proposed rulemaking (by a third party)".

This prematurely issued "permit" is incorporated herein by reference. For the Commissioners' convenience, a copy of the second page of this document is attached hereto as Exhibit A.

This page is noteworthy because the Commission states, under "special operating conditions or restrictions", that, quote, "The grant of this construction permit is conditioned upon the final outcome of MM Docket No. 99-23. Construction is at the permittee's sole risk". Since the administrative review under 99-23 (to be treated in subsequent section) had not yet been concluded and/or had its disposition Ordered effective by November 30, 1999, the Commission itself is plainly saying that this premature permit was therefore still encumbered, and not representative of an actual permit permitting construction at Archer City.

This point is essential in that it clearly proves to the Commissioners that KRZB as an Archer City service was still undeniably encumbered as of November 30, 1999, still held no "original" Permit or "valid authorization" permitting construction at Archer City, and was not permitted to be built until--by the Commission's own admission--the Commission itself concluded and effectively closed its own administrative review.

The Commissioners should please note that all engineering filings of the KRZB 301 application under BMPH-9902171B were found to be in perfect order and approved by the Commission's engineering staff. The only preclusion remaining, according to the Commission itself, was an administrative review within the Commission necessary to be concluded prior to the grant of the subject construction permit. This condition clearly meets the benchmark of tolling event status under MM Docket No. 98-43, FCC 98-281, and *Streamlining R&O*, 13 FCC Rcd at 23091.

Given the Commission's own admission and acknowledgment on November 30, 1999, that pending grant of KRZB's first-ever Permit permitting construction of a service at Archer City was "conditioned" on a specific administrative review still awaiting conclusion, and thereby delayed and encumbered due to such Commission proceeding, Blair is grossly in error---and in defiance of printed Commission admission---to claim that KRZB was not validly encumbered from constructing the subject Archer City service at that time. Moreover, Blair blatantly violates Commission rules and the law by erroneously punishing Texas Grace and deducting lifespan time off a

Permit the Commission itself said was not yet ready for grant on November 30, 1999---and would not be until February 7, 2000.

Texas Grace regrettably notes that Blair chose to cover up the existence of this vital evidentiary document as cited in the KRZB Petition for Reconsideration, omitting its existence from her purported “summary” of Texas Grace’s own Petition within this Federal proceeding, and thereby shielding vital evidence of Commission admission of valid encumbrance on the pending Archer City Permit from the Commissioners.

**9. BLAIR WILLFULLY COVERS UP TEXAS GRACE’S PETITION PLEADING EXPLAINING HOW KRZB BECAME PART OF A SECOND ADMINISTRATIVE REVIEW AS THE RESULT OF AN OBSTRUCTIVE DROP-IN FILED BY A THIRD PARTY.**

Among other places in its Petition, Texas Grace plainly informed Blair on p. 9 that “KRZB became involved in a second administrative review pending grant of the Archer City permit as a result of a proposed rulemaking introduced by a third party (MM Docket No. 99-23, RM-9423)”, involving a “drop-in petition obstructive to KRZB’s service plan”.

Blair was also informed by the Petition, and it is a matter of record in the noted proceeding, that the obstructive drop-in served to prevent Texas Grace from building at its intended facility site following the Ordered KRZB community change to Archer City, which would subsequently allow another party to utilize the spectrum space for a lucrative Dallas-Ft. Worth area co-channel move-in. Indeed, the legal counsel who facilitated withdrawal of the obstructive drop-in petition after Texas Grace named him as party to a “sham filing” pleading (see Essential Supplemental Comments of Texas Grace dated May 24, 1999, under Docket No. 99-23, incorporated by reference) was a former FCC Allocations Chief, and colleague of Blair’s.

Should this case be forced to U.S. District Court on appeal, Texas Grace must raise the issue of why Blair would cover up this essential argument in making purported summary of Texas Grace’s own pleading. Is Blair trying to protect her former Commission colleague? The other issue that would need to surface in District Court is why, despite professing knowledge of the proceeding under Docket 99-23, Blair turned a blind eye and did not pursue or even recommend any punitive action against party(ies) demonstrated in Texas Grace’s pleadings to have participated in the “sham filing”.

Although Texas Grace certainly did not want to be part of the noted obstructive party's administrative review, KRZB found its 301 application inadvertently a part of this review under Commission rules, after the obstructive drop-in surfaced. Yet in allegedly summarizing the words and arguments of Texas Grace's Petition for Reconsideration, Blair blatantly fails to acknowledge---and indeed covers up---KRZB's clearly articulated pleading argument referencing the "obstructive drop-in", the objection to the "sham filing" it was forced to make against the obstructive party, and the fact that Texas Grace's pleading at the time had indicated that KRZB was fighting for the very integrity of its service plan after being dragged into the administrative review as a result of the later-withdrawn "sham filing".

The Commission itself, as noted in the previous section, acknowledged that the referenced third party-induced administrative review was a legitimate encumbrance precluding grant of a KRZB Archer City service Permit as late as November 30, 1999...with no original Archer City service permit granted until February 7, 2000. But Blair, as noted, has obscured and refused to uphold such Commission acknowledgment.

**10. IN TANDEM WITH OBSCURING THE OBSTRUCTIVE DROP-IN/"SHAM FILING" ENCUMBRANCE, BLAIR FALSELY INSINUATES THAT KRZB'S INVOLVEMENT IN THAT ADMINISTRATIVE REVIEW WAS ALLEGEDLY INSPIRED BY A DESIRE TO OBTAIN A PERMIT FOR POWER UPGRADE--A PERMIT KRZB NEVER SOUGHT.**

As a matter of record, the Commissioners should please note that Texas Grace's involvement in the administrative review deriving from MM Docket No. 99-23, as clearly plead by Texas Grace at the time (see Essential Supplemental Comments of Texas Grace dated May 24, 1999, under Docket No. 99-23, and treated under previous section), was to ensure the integrity of its service plan as a C2 broadcast facility to be licensed at Archer City. Texas Grace found itself dragged into this proceeding in accordance with Commission rules, when KRZB learned of an unexpected, obstructive drop-in frequency proposal precluding usage of its intended transmission site, right at the opening of KRZB's ordered window period to specify its transmission site at the new community via Form 301 Application.

Throughout the proceeding, Texas Grace demonstrably and diligently fought to prosecute grant of its pending C2 Permit under BMPH-990217IB, inclusive of securing FAA approval of its tower site as a C2 facility, and ultimate tower registration of the proposed service as a C2 facility with the Commission under structure

registration number #1206672. All such information was furnished to and accepted by the Commission so as to secure grant of KRZB's Permit as a C2 service at Archer City. In the "Elimination of Conflict with Other Parties" filing made by Texas Grace in the referenced MM Docket 99-23 administrative review (accepted by Commission on October 6, 1999 and incorporated by reference), Texas Grace clearly stated the following: "Approval is now requested on Texas Grace's pending Construction Permit Application BMPH-990217IB, as Amended, allowing C2 Service for KRZB/Archer City, TX, pursuant to MM Docket 97-225". In further footnoting, Texas Grace stated: "The Commission should please note that timely approval of this pending Application (as a C2 service) is *vital*ly important to the livelihood of KRZB (FM), since the Station has yet to be issued any Construction Permit specifying Archer City, TX as its new community of license".

It is true that Texas Grace was advised by its technical consultant and counsel to make a showing in the MM Docket 99-23 proceeding that KRZB could potentially be upgraded to a C1 service offering additional public interest benefits in contrast with the prospective drop-in service at Tipton, OK against which, at the time, it was being pitted. However, this showing was made purely to preserve the integrity of the intended KRZB service as a C2 at Archer City, the very lifeblood of which was at stake by virtue of the obstructive drop-in. Neither a prospective C1 upgrade, nor the actual service plan Texas Grace worked diligently to secure under pending application for grant of a C2 Permit at Archer City, could occur until the obstructive Tipton drop-in was deleted under administrative review. Both scenarios required the same net result--disposal of the obstructive drop-in.

Blair's latter-day insinuation that Texas Grace's involvement in the 99-23 administrative review was not to preserve its C2 service plan from obstruction by the third party, but rather, motivated by a scheme to obtain a "station class change", is without foundation. Such insinuation as made in Blair's Petition denial totally ignores the obstructive drop-in by the syndicate represented by Blair's former colleague and former FCC bureau chief, and is clearly disproved by KRZB's legal and engineering filings connected to the proceeding--all accepted and affirmed by the Commission--wherein the only construction permit prosecuted and obtained by Texas Grace in conjunction with disposal of the obstructive drop-in was the grant of the C2 service Permit at Archer City, on February 7, 2000.

**11. FALSE REPRESENTATION IS MADE BY BLAIR THAT TEXAS GRACE SEEKS "THREE ADDITIONAL YEARS" ON ITS ARCHER CITY PERMIT--IMPLYING THAT TEXAS GRACE HAD ALREADY BEEN GRANTED SUCH PERMIT LIFESPAN TO CONSTRUCT.**

On p. 3 of Blair's denial of the Texas Grace Petition for Reconsideration, Blair states: "We reject Texas Grace's claim that its Archer City, Texas permit is entitled to three additional years to construct". As the entity allegedly making such claim, Texas Grace must correct such false insinuation, and clarify the precise request at hand.

The insinuation put forth by Blair here, falsely and with lack of candor, is that Texas Grace has already had the benefit of a full three (3) year, unencumbered lifespan on its Permit to serve the community of Archer City. However, the Commission's own record shows that nothing could be further from the truth. In reality, the very first, "original" Permit and only "valid authorization" allowing Texas Grace to construct KRZB as a broadcast station licensed to Archer City was not granted until February 7, 2000--less than one year ago.

There was a prematurely issued permit for Archer City service bearing a date of November 30, 1999 (please see Section #8). However, that permit unfortunately necessitated rescinding, when it was found to bear the disclaimer that it did not actually permit the construction, but was "conditioned" and encumbered by a then yet-to-be disposed of administrative review.

Texas Grace has *never* asked for "3 additional years" on "its Archer City permit". We asked only for the full, *original* three (3) year unencumbered lifespan for this new broadcast service---which, with allowance of only one (1) year to build, we have blatantly been denied by Blair.

Blair's insinuation that Texas Grace has already had 3 years to construct the Archer City service is a gross misrepresentation, and covers up requisite administrative reviews necessary to have been concluded by the Commission prior to grant of the Permit on February 7, 2000. Such insinuation also obscures the fact that Blair deducted all three (3) years off the lifespan of the future Archer City Permit *before it was ever granted*, in contradiction with Commission rules and the law, and to the Permittee's obvious prejudice. Instead, the one-year given Texas Grace to construct derived from the equivalent of a potential bonus year added on to the expiration dates of "valid authorizations"/permits already granted a 3-year lifespan, but still unbuilt as of December 21, 1999 (Streamlining MO&O)--a date clearly preceding Texas Grace's receipt of its valid authorization to construct KRZB/Archer City.

By falsely posturing that Texas Grace allegedly asked for "3 additional years" on KRZB's Archer City Permit, Blair deceives the Commissioners into thinking that Texas Grace previously had three unencumbered years



for such construction, let alone any Permit permitting construction at Archer City prior to February 7, 2000---which indeed, was not the case.

The mere 1-year of construction time accorded for KRZB to construct at Archer City understandably proved not to be enough time for Texas Grace to facilitate what new station permittees are routinely given 3 years to accomplish--despite diligent effort to work within the prejudicial 1-year framework. The Commissioners are asked to please correct this injustice, and grant KRZB/Archer City an amended construction permit appropriately bearing expiration of no earlier than February 7, 2003.

**12. BLAIR DENIED KRZB/ARCHER CITY EQUITABLE TREATMENT BY DEDUCTING 3 YEARS OF LIFESPAN TIME OFF THE PERMIT BEFORE IT WAS EVER ISSUED, OBSCURED THE FACT THAT KRZB HELD NO ORIGINAL PERMIT ON THE EFFECTIVE DATE OF *STREAMLINING R&O* TOLLING RULES, AND MISAPPLIED A PROSPECTIVE RELIEF 4TH YEAR AS SOLE PERMIT LIFESPAN.**

Blair's conduct in deducting the entire 3-year lifespan off KRZB's Archer City construction permit before it was ever issued can not under any circumstances be deemed "fair and equitable" treatment of permittee Texas Grace. Quite the contrary, it represents a prejudicial attempt by Blair to kill the Archer City enterprise before it could ever get off the ground.

Blair's conduct further represents unwarranted "punishment" to Texas Grace for engaging in conduct deemed favorable and correct by the Commission in connection with a previous permit which was already deleted from the Table of Allotments (under DA 98-2002, effective November 17, 1998) by the Commission itself before the *Streamlining R&O* of February 16, 1999 ever took effect.

Therefore, Texas Grace held no "original" permit or "valid authorization" at the time of the Streamlining R&O's effective date--as falsely contended by Blair--and therefore should have had absolutely no time deducted off the then yet-to-be issued KRZB/Archer City Permit, whose grant was held up by bona fide Commission administrative review.

Blair falsely contends that Texas Grace "received the relief promised in the *Streamlining MO&O*" effective December 21, 1999, which would amount to as much as one (1) year of bonus add-on time to an existing permit's lifespan of three unencumbered years. However, KRZB was still in clear permit limbo on that effective date,

having yet to be issued an "original" Archer City service Permit permitting construction. So it therefore had yet to be granted, or to have exhausted, any of the three years preceding the potential bonus fourth year. Instead, Blair merely had her staff limit KRZB/Archer City to a lifespan of the one add-on year--which remains its sole granted lifespan.

To give the Commissioners an idea of just how inequitable Blair's treatment can vary from permittee to permittee, Texas Grates notes--with no disparagement or implication of non-viable encumbrances suggested on the part of the other permittee--that KLTR/Caldwell, TX recently showed up in the Commission database as an unbuilt, still-tolling CP dating back to an original grant date of 1988--in its same community!

We prevail upon the Commissioners to ask Blair, if Blair can cite any other permittee besides KRZB/Archer City, who found their construction permit's full 3-year lifespan deducted before such a permit allowing first-ever service at the specified community was even granted? We further request that the Commissioners ask Blair to name any other permittee who held absolutely no original permit or valid authorization permitting construction of a new broadcast facility on the effective date of implementation of the new tolling rules (February 16, 1999), but was nonetheless told that their three unencumbered years for construction had already run out when their Permit was first granted in the year 2000?

As the Commissioners can see, Blair's misconduct in denying Texas Grace a three-year lifespan on its KRZB/Archer City Permit represents grossly inequitable treatment, and complete defiance by Blair of Commission rules.

**13. BLAIR COVERS UP AND FAILS TO ANSWER TEXAS GRACE'S CLEARLY RAISED ARGUMENT PROTESTING BLAIR'S TARDY RESPONSE CONDUCT IN FIRST REPLYING TO AND DENYING TOLLING REQUEST OVER 19 MONTHS AFTER REQUEST MADE.**

Texas Grace clearly raises the argument of Bureau Chief Blair's outright tardy misconduct in taking over 19 months to answer Texas Grace's timely-filed Tolling Request, as made March 5, 1999 before the Commission. Among other places, Texas Grace pleads the matter on p. 3 of its Petition as follows: "The inexcusable amount of time---over 19 months---that it took the Chief to issue a response to Texas Grace's time-sensitive request for tolling in rightfully raised, as it blatantly prejudices and injures the permittee's construction effort and ability to seek redress".

Given Blair's defiance of Commission rules in prejudicially according Texas Grace only a 1-year period to construct an Archer City broadcast station, it is noteworthy that Blair spent more time sitting on Texas Grace's time-sensitive tolling request, than she gave the permittee to construct.

The grossly tardy denial by Blair of KRZB's Tolling Request represents behavior by a bureau Chief which would never be tolerated by the Commission--under strict measure of penalty--had it been perpetrated by licensee or permittee. More important in the Texas Grace case, wherein Blair had already prejudiced the permittee by the only 1-year lifespan granted on the Permit, the tardy denial response to KRZB's Tolling Request came with barely more than 3 months lifespan remaining on the Permit--- denying Texas Grace any time or means to seek rightful legal redress so as to preserve the Permit, without penalty of its cancellation.

Since Texas Grace was on the brink of important construction and vendor decisions as part of the process of building its facility upon receiving Blair's "eleventh hour" tolling denial, KRZB obviously had to suspend such construction efforts or potentially risk great financial loss--with barely 3 months remaining on the Permit, and no assurance that necessary tower construction could be completed in time. Had Blair responded to Texas Grace's Tolling Request responsibly and timely, Texas Grace would have had ample opportunity to seek legal redress without interrupting construction.

Noting the Commission's own Streamlining Order effective February, 1999, tolling status must be applied for an "administrative or judicial review" wherein a permittee such as Texas Grace has a "Petition for Reconsideration or Application for Review" before the Commission on an "extension grant" matter, to allow a permittee the right of legal relief. Since KRZB's Petition for Reconsideration in this vital matter was clearly accepted by the Commission--and serves as a precursor to the Application for Review herein--the Petition's receipt date of November 20, 2000 should, at the very least, mark a freezing the clock on deduction of any further lifespan time from the KRZB Permit until all avenues of legal redress may be sought by the permittee under the Rules. However, since Texas Grace tied this Petition to an Emergency Motion for Stay of the precipitating tardy tolling denial Order by Blair on October 20, 2000, it is Texas Grace's position, as noted in companion Application for Review filed on this date (incorporated by reference), that the timeclock on the Permit lifespan should actually stop on October 20, 2000 pending resolution of the tolling issue through the Commissioners, and/or U.S. District Court.


Texas Grace protests the lack of candor by which Blair not only ignored this vital tenet of KRZB's Petition in making purported "summary" of Texas Grace's own pleading, but also failed to address the matter and its ramifications on the permittee, and covered up her tardy misconduct from the reviewing Commissioners.

#### 14. CONCLUSION

By this Application for Review, KRZB respectfully seeks to have immediate reissuance of its facility permit at Archer City, bearing an expiration date of no earlier than February 7, 2003. Permittee Texas Grace has demonstrated that it has been patently denied provision of the three (3) unencumbered years for construction of its C2 service facility at Archer City, TX, to which it is entitled under the Commission's rules. Permittee Texas Grace has understandably found it impossible to complete construction in the only 1-year timespan accorded by the Chief to build such a service. Texas Grace passionately wishes to complete construction, so that it may operate this vital broadcast service. To this end, KRZB has comprehensively detailed qualifying tolling events/encumbrances in its Petition for Reconsideration of November 20, 2000, as well as within the Application for Review herein, and both welcomes and appreciates the prudent addressing of these issues by the Commissioners.

Respectfully Submitted,

Texas Grace Communications

By: 

Dave Garey, Proprietor

January 12, 2001

### **CERTIFICATION**

I, Dave Garey, proprietor of Texas Grace Communications, and permittee of KRZB (FM) licensed to Archer City, Texas, do hereby verify that the statements contained in the instant document are true and correct to the best of my knowledge and belief. Although this submission is authored by Texas Grace's proprietor, John Trent remains legal counsel of record for Texas Grace Communications, and it is therefore respectfully requested that he be simultaneously served by the Commission or other interested parties with all relevant procedural or response documents.

Respectfully Submitted By:  
Texas Grace Communications

A handwritten signature in cursive script, appearing to read "Dave Garey", is written over a horizontal line.

Dave Garey, Proprietor

January 12, 2001

Dave Garey  
Texas Grace Communications  
P.O. Box 398  
Wichita Falls, TX 76307

cc:

John Trent  
Putbrese, Hunsaker & Trent  
100 Carpenter Drive, Suite 100  
Sterling, VA 20167

(703) 437-8400

Callsign: KRZB

Permit No.: BMPH-19990217IB

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: As required to achieve authorized ERP.

Antenna type: (directional or non-directional): Non-Directional

Antenna Coordinates: North Latitude: 33 deg 51 min 40 sec

West Longitude: 98 deg 38 min 52 sec

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the Horizontal Plane (kW):	50	50
Height of radiation center above ground (Meters):	138	138
Height of radiation center above mean sea level (Meters):	455	455
Height of radiation center above average terrain (Meters):	150	150

Antenna structure registration number: 1206672

Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

Special operating conditions or restrictions:

- 1 The grant of this construction permit is conditioned upon the final outcome of MM Docket No. 99-23. Construction is at the permittee's sole risk.
- 2 The permittee/licensee must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

\*\*\* END OF AUTHORIZATION \*\*\*

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